

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Columbus Southern Power Company to) Case No. 10-343-EL-ATA
Amend its Emergency Curtailment)
Service Riders.)

In the Matter of the Application of Ohio)
Power Company to Amend its Emergency) Case No. 10-344-EL-ATA
Curtailment Service Riders.)

**MOTION TO INTERVENE AND COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in these cases where proposed peak demand response program designs would govern participation by certain residential customers and condition customer participation in Regional Transmission Organization ("RTO") demand response programs.¹ In addition, the Commission's decision in these cases may further define how Ohio electric distribution companies will comply with Ohio statutory demand reduction benchmarks as presented in Senate Bill 221 ("SB 221"), affecting all Ohio utility consumers across customer classes.² OCC is filing on behalf of all the approximately 1.2 million residential utility consumers of Columbus Southern Power Company and Ohio Power Company (collectively "AEP" or "Companies"). The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

¹ See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

² R.C. 4928.66(A)(1)(b).

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

These cases involve the review of the reasonableness and lawfulness of AEP’s Application for approval of plans to comply with Ohio’s peak demand reduction benchmarks. OCC has authority under law to represent the interests of all the approximately 1.2 million residential utility customers of AEP, pursuant to R.C. Chapter 4911.

II. INTERVENTION

R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio’s residential consumers may be “adversely affected” by these cases, especially if the consumers were unrepresented in a proceeding directly affecting participation and compensation of consumers for that participation in peak demand reduction programs. Also, this case has implications on the amount of Fixed Resource Requirements (“FRR”) costs that could be avoided by AEP, costs that are paid by residential and other customers. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is representing the residential consumers of AEP in order to ensure that terms and conditions of the programs are conducive to participation by those customers, either directly or through aggregation. This interest is different than that of any other party and especially different than that of the utilities whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for consumers will include advancing the position that of the two proposed options, the First Customer Option will enable the Companies to comply with the statutory peak demand reduction benchmarks presented in Ohio Revised Code 4928.66(A)(2) and will directly benefit AEP's residential and other customers by reducing peak demand within the Companies' service territories. OCC's position is therefore directly related to the merits of these cases pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of these cases with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding these cases in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a very real and substantial interest in this case where residential customer participation in peak demand reduction programs and compliance with the benchmarks in SB 221 are at stake.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the "extent to which the person's interest is represented by existing parties." While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio's residential utility consumers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed OCC's right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by

denying its intervention. The Court found that the PUCO abused its discretion in denying OCC's intervention and that OCC should have been granted intervention.³

III. COMMENTS:

In its Application, AEP proposes two options for consideration in order to meet its statutory peak demand reduction benchmarks. Ohio Revised Code §4928.66(A)(1)(b) requires electric distribution utilities to implement peak demand reduction programs.⁴ Ohio Administrative Code 4901:1-39-05(E) states that a utility may either demonstrate actual peak demand reduction, or demonstrate capability to reduce peak demand through a program that either “meets the requirements...to be counted as a capacity resource under the tariff of a regional transmission organization”⁵ or is “equivalent to a regional transmission organization program, which has been approved by [the PUCO].”⁶ Thus, the statutory language and the PUCO rules require electric distribution utilities to implement programs or obtain commitments of customer-sited programs.

Of the two options presented by AEP, only the First Customer Option (“First Option”), which AEP describes as “designed to achieve peak demand reductions and...help the Companies satisfy the EE/PDR mandates within SB 221”⁷ directly ensures the Companies’ capacity to reduce peak demand within their Ohio service territories. The

³ See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

⁴ R.C. 4928.66(A)(1)(b): “Beginning in 2009, an electric distribution utility shall implement peak demand reduction programs designed to achieve a one percent reduction in peak demand in 2009 and an additional seventy-five hundredths of one percent reduction each year through 2018.”

⁵ Ohio Adm. Code 4901:1-39-05(E)(2)(a).

⁶ Ohio Adm. Code 4901:1-39-05(E)(2)(b).

⁷ *In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders*, Case No. 10-343-EL-ATA, et al, Application at 5 (March 19, 201).

First Option therefore offers the greatest potential for Ohio customers to directly realize the benefits of peak demand reduction as envisioned in SB 221. The Second Customer Option (“Second Option”) does not guarantee a peak demand reduction in AEP’s Ohio service territory and restricts customers or curtailment service providers from freely participating in PJM demand response programs.⁸

The First Option allows the Companies to pursue the peak demand reduction benchmarks by offering terms and conditions competitive with the PJM demand response programs. The Emergency Curtailable Service Rider is available to customers taking service under various schedules, including schedule GS-2, which may include some residential load.⁹ Under the ECS Rider, the Companies are offering customers an energy credit equal to least “80% of the AEP East Zone hour Real-time Locational Marginal Price, including congestion and marginal losses,”¹⁰ and a demand credit equal to at least “80% of the Reliability Pricing Model auction price established by PJM in its Base Residual capacity auction for the current delivery year.”¹¹ Customers choosing to participate in the ECS rider would be participating in an AEP-sponsored program designed to reduce peak demand, as required by the statute and rule presented above. This satisfies the intent of the statute, which is for Ohio utilities to reduce the “average peak demand on the utility in the preceding three calendar years.”¹²

⁸ The Application states that “AEP Ohio proposes that only customers who voluntarily commit their demand response load registered with PJM under the DRPs should be permitted to participate....” (Application at 7).

⁹ AEP Application at Exhibit A (March 19, 2010).

¹⁰ AEP Application at 4 (March 19, 2010).

¹¹ Id. at 4-5.

¹² R.C.4928.66(A)(2)(a).

OCC also recommends that the First Option be made available to Curtailable Service Providers serving AEP customers in the applicable rate classes.

Under the Second Option, the link between the Companies' average peak demand and customers' PJM commitment is not established. Here, a customer participating in the PJM demand response program agrees to "report curtailment information"¹³ and provide other documentation to AEP. AEP is then allowed to count participation in the PJM program toward its peak demand benchmarks. As stated in the AEP ESP case, customer participation in PJM programs does not necessarily mean that the Companies' benchmarks are achieved:

AEP-Ohio argues that it is unclear how the interruptible capacity of a customer participating in PJM's demand response program can count toward the Companies' benchmarks without being under the control of the Companies and "designed to achieve" peak demand reductions as required by the statute.¹⁴

While the Second Option requires the customer to report to AEP all of its curtailment activities, these curtailment activities do not necessarily reduce the Companies' specific peak demand, as noted in the ESP Entry:

[T]he PJM program participant/customer's ability to interrupt is of no use to AEP-Ohio, as the Companies claim that PJM's curtailment request is based on PJM's zonal load and not AEP-Ohio's peak load.¹⁵

This does not achieve the intent of the statute, unless PJM calls a curtailment event that happens to coincide with one or both of the Companies' peak demand times. Even the capability, without an event being called, represents only PJM capability. The Second

¹³ Application at 5 (March 19, 2010).

¹⁴ *AEP Ohio ESP Case*, Case No. 09-917-EL-SSO, et al, Entry on Rehearing at 54 (July 23, 2009).

¹⁵ *Id.* at 54.

Option, as presented, does not provide AEP with the option to access this capability to reduce demand, should an event occur. In other words, there is no showing that the capacity resource under this arrangement will be available to AEP in the event that one of its specific Companies requires curtailment within their service territory, apart from a PJM curtailment request. Therefore, it does not satisfy the rule as presented in 4901:1-39-05(E).

Further, customers should be able to choose to participate in PJM programs, without having to comply with the condition of commitment to AEP. Customer participation in PJM demand response does provide “improved grid reliability and improved efficiency of the market”¹⁶ and should be allowed. However, with no direct link to AEP’s peak demand, it should not be counted towards the benchmarks established specifically to reduce Ohio utilities’ peak demand.

It follows also, that under no circumstances should customers who participate in PJM demand response programs, and get remunerated for their participation by PJM, be entitled to a second payment (or allowed to opt-out of the riders recovering the cost of energy efficiency and peak demand reduction compliance) if they seek to commit all or a portion of their PJM curtailment to AEP.

Under paragraph 16 of their application, AEP proposes to collect some implementation costs for administration of the second program option. If the Commission were to approve the second program option, OCC questions the need for the recovery of certain costs. While these costs would go through a prudence review in the EE/PDR rider proceeding, it appears to OCC that having AEP create customer baseline

¹⁶ Id. at 56.

load calculations and analyze the variances from that baseline during events is redundant of PJM's analytical efforts to verify the savings for their program with the same customer.

Finally, if the Second Option is approved, only the coincidental peak demand reductions that would simultaneously result for PJM and for one or more of the AEP Ohio Companies should be counted towards the Companies' benchmarks. Otherwise, this Second Option does not offer Ohio customers actual peak demand reduction or peak demand reduction capabilities.

IV. CONCLUSION

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio residential consumers, the Commission should grant OCC's Motion to Intervene. Further, the PUCO should approve the First Customer Option, which provides the benefits to Ohioans as envisioned by SB 221, and reject the Second Customer Option, which restricts retail customers from freely participating in PJM peak demand response programs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* and *Comments* was served on the persons stated below *via* regular U.S. mail, postage prepaid, this 28th day of May 2010.

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